



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

PHI AIR MEDICAL

Respondent Name

TASB RISK MGMT FUND

MFDR Tracking Number

M4-15-1338-01

Carrier's Austin Representative

Box Number 47

MFDR Date Received

January 05, 2015

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "PHI Air Medical is requesting a dispute resolution in reference to Tasb Risk Management Fund's reimbursement on the above stated claim. Tasb Risk Management Fund's response to PHI Air Medical's Second Level Appeal request for the additional reimbursement of \$14,887.94 was denied with the explanation: "Payment by the carrier will be according to the medical policies and fee guidelines established by the Division. Amounts shall be directed to the injured employee to employer, nor shall an attempt be made to collect the unpaid amount to the injured employee or the employer unless the injury is finally adjudicated not to be compensable to the Division finds the provider in violations the Texas Labor Code, Title S, Subtitle A, Sections 408.022, 408.023 or 408.024 PHI Air Medical's request for resolution is based on the following:

- Texas Department of Insurance Division of Workers' Compensation does not have a 'fee schedule' for air ambulance services."

Amount in Dispute: \$14,887.94

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "...Additionally, the date of service is past the timely filing requirement to file a medical fee dispute. Per rule 133.307, a medical fee dispute shall be filed no later than one year after the date of service in dispute."

Response Submitted by: TASB RISK MANAGEMENT FUND

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 06, 2013	Air Ambulance Services	\$14,887.94	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.

Issues

1. Does the federal McCarran-Ferguson exempt the applicable Texas Workers' Compensation medical fee guideline from preemption by the federal Airline Deregulation Act?
2. Did the requestor waive the right to medical fee dispute resolution?

Findings

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act (ADA) of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee schedule amount. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.* SOAH held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that:

In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . .

The Division agrees. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978, based upon SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute. The disputed services will therefore be decided pursuant to Texas Labor Code §413.031 and all applicable rules and fee guidelines of the Texas Department of Insurance, Division of Workers' Compensation.

2. To be eligible for medical fee dispute resolution, a request must be timely filed in accordance with 28 Texas Administrative Code §133.307(c)(1), which states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute."

The date of the services in dispute is March 06, 2013. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on January 05, 2015. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

Conclusion

The Division finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute. For that reason, the merits of the issues raised by the parties to this dispute have not been addressed.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signatures

<hr style="border: none; border-top: 1px solid black;"/>	Sandra Hernandez Medical Fee Dispute Resolution Officer	3/17/15 Date
Signature		

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.